

## Dealership Update



# Does Your Holiday Policy Need A Tune Up?

By [John Donovan](#)

(Dealership Update, No. 1, February 2011)

During the last several months, we have received numerous calls from clients about holidays and holiday pay. As we enter the new year, this might be a good time to take a close look at your holiday policy and ensure that it accurately reflects how you deal with holidays and holiday pay and, if necessary, to adjust it to reflect how you want to handle them during 2011.

First, a few general rules:

- there is no federal law requiring employers to celebrate holidays or to pay their employees for these days. Some states have special pay requirements for employees who work on a holiday, but there are no state law requirements that private employers grant and pay for holidays;
- because there is no governing law, employers are free to recognize as many or as few holidays as they want. Employers are also free to pay holiday pay or not pay holiday pay, except where a state law may require payment if the employee works on the holiday; and
- once you adopt a paid holiday policy, typically by publishing it in an employee handbook or other policy manual, the employer is legally obligated to do what it promised. Failing to pay "all wages due" can result in a dealership being hit with penalties and attorney's fees.

When reviewing your holiday policy, we recommend that you consider the following:

1. To which employees do you want to pay holiday pay? All employees? Including managers? Just full-time employees? A policy that says: "We pay holiday pay to all full-time employees" would require that you pay extra holiday pay to everyone in a full-time status. If you want to limit it, say so in your policy.
2. Do you want to automatically pay employees holiday pay for every listed holiday, or do you want to limit it to those employees who are normally scheduled to work on the holiday? For example, if a holiday falls on a Sunday when the dealership is normally closed, do you still want to pay an extra day's pay to your employees? If not, you need to make that clear in your policy.
3. How do you want to calculate "holiday pay"? Because dealerships use a wide range of pay plans, from 100% commission to 100% hourly and everything in between, you will need to consider the amount of holiday pay

you will pay. You may lawfully vary holiday pay from position to position, but you must treat all employees in the same position in the same fashion or run the risk of a discrimination claim.

One way to determine the amount of holiday pay you pay would be to prepare a listing of all job categories, showing how they are compensated. Then, for each, you can decide what form the holiday pay should take. Some dealerships look at the employee's earnings over the previous year or quarter and set the amount such that the employee will receive his or her regular compensation for the day. Others pay an approximate amount. Still others pay a day's worth of salary or hourly earnings but do not include any lost commissions.

Once you have completed the grid, you can post it in the accounting office to ensure that everyone knows how pay is calculated. Again, a dealership can pay varying amounts of holiday pay to employees in different job categories, so long as they are consistent within that category.

4. How will you pay an employee who works on a holiday? A few states have laws which govern this, but in most cases, you only need to pay for the hours actually worked plus any holiday pay you have promised. Do you want to give the employee another day off with pay in lieu of paying the employee what might amount to "double time"? If so, be sure to spell this out in the policy.

There are lots of ways to deal with holidays and holiday pay, and no one way is "the best way." Holiday pay is an employee benefit which a dealership provides to its employees on whatever terms it wishes. So you need to tailor your holiday pay policies, taking into account your business operations, the cost, what your competition is doing and, of course, your employees' expectations.

Because it is a valuable employee benefit, be sure that your employees *understand* the benefit, and also be sure that they do exactly as they promised.

*For more information contact the author at [jdonovan@laborlawyers.com](mailto:jdonovan@laborlawyers.com) or 404-231-1400.*